If the attention of the learned president had been drawn to these salient facts, he would not have come to the decision as he did, and this appeal would not have been necessary. Under the circumstances, the appeal is allowed but with no order as to costs. House No. 7B Kampong Bahru, Lunas, is hereby declared to be the property of the objector-appellant and not liable to attachment in execution of a decree obtained against the defendant.

*Appeal allowed.*

Solicitors: *Oo Gin Sun; Lim Huck Aik & Co.*

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## PUBLIC PROSECUTOR v. MUNUSAMY

**[A.Cr.J. (Chang Min Tat J.) January 16, 1967]**

**[Ipoh — Criminal Appeal No. 74 of 1966]**

*Criminal Law and Procedure — Charge under repealed rules — Retrial order — Criminal Procedure Code (Cap. 6), s. 399.*

*Constitutional Law — Citizenship — Citizenship by naturalisation — Good character — Declaration that applicant has not been convicted or arrested or detained — False declaration — Previous convictions — Proof — Citizenship Rules 1964 — Constitution of Malaysia, art. 19(1).*

The respondent had applied for citizenship by naturalisation and in his application he made a declaration that he had not been convicted or found guilty by any court of a criminal offence. In fact he had a number of previous convictions. He was charged with making a false declaration. The learned magistrate acquitted the respondent as he was not satisfied that the contents of the declaration had been fully interpreted to the respondent. He also held that the proof of the previous convictions of the respondent had not been properly adduced.

**Held:** (1) it was sufficient for the prosecution in this case to prove that a declaration had been made and that the particulars in such declaration were untrue or incorrect;

(2) as a copy of the list of previous convictions had been supplied to the magistrate, the report of the previous convictions was properly admitted in evidence;

(3) for the above reasons the acquittal and discharge could not stand and therefore a retrial ordered.

*Cases referred to:—*

(1) *Public Prosecutor* v. *Yong Nam Seng & Anor.* [1964] M.L.J. 85.

(2) *Mohamed Abdullah* v. *Public Prosecutor* [1965] 2 M.L.J. 260.

(3) *Chong Peng* v. *Public Prosecutor* [1954] M.L.J. 39.

(4) *Public Prosecutor* v. *Ng Fah* [1954] M.L.J. 150 C.A.

(5) *Laha* v. *Emperor* (1909), I.L.R. 36 Cal. 808, 814.

MAGISTRATE'S CRIMINAL APPEAL.

*Idris bin Yusof* (Deputy Public Prosecutor) for the appellant.

*Yeoh Kean Hua* for the respondent.

**Chang Min Tat J.:** The respondent to this appeal was charged at the Ipoh magistrate's court on the 20th October, 1966, with the following charge:—

"That you on 22nd December 1965 at the Registration Office, Ipoh, in the District of Kinta, in the State of Perak, did make a false declaration with a view to inducing the Registrar of Citizens, Perak, to grant a citizenship certificate, to wit, in your application for registration as citizen under the Citizenship Rules 1960, you declared yourself to be of good character, whereas in fact you were a convicted person and had not received a free pardon and that you thereby committed an offence punishable under section 16 of the Second Schedule to the Federation of Malaya Constitution, 1957."

At the close of the case for the prosecution, he was acquitted and discharged without his defence being called. Against that acquittal and discharge, the public prosecutor has now appealed.

I shall deal with the substantive appeal at a later stage, and propose to deal now with the charge for reasons which will appear obvious.

It is clear from the wording of the charge that though the offence was alleged to have been committed on the 22nd December, 1965, the charge was preferred under the Citizenship Rules, 1960, and that the substance of the charge was that the respondent had made a false declaration by representing himself to be a man of good character when he, in fact, was a convicted person who had not received a free pardon.

In support of this allegation, the prosecution introduced in evidence a certificate from the Registrar of Criminals, Malaya and Singapore, which listed particulars of 5 convictions, all in respect of property, the latest of which was dated 14th October, 1959. Not one of these offences was punished with a term of imprisonment extending beyond 9 months. There was no allegation that the respondent was ever sentenced to death.

A reference to the Citizenship Rules, 1960, (published under L.N. 310 of 1960) reveals two surprising factors.

In the first place, the Rules contained forms of application which, of course, formed part of the Rules and in these forms, the applicant was required to declare (i) that in the event of a certificate being granted to him, he intended to reside permanently in the Federation, (ii) that he was of good character and had an elementary knowledge of the Malay language, and (iii) that he was prepared to take the oath of allegiance, and a further declaration that the particulars were true to his knowledge and belief. An asterisk was printed after the words "good character," by way of reference to what must be regarded as a statutory definition of good character appearing as a footnote in the application forms. The definition is in the following words:—

"For the purpose of any application for registration

under any of the said articles, a person shall be deemed to be of good character unless, within the period of three years immediately preceding the date of the application —

(a) he has been convicted by a competent court in any country of a criminal offence for which he was sentenced to death, or

(b) he has been detained under a sentence of imprisonment of twelve months or more imposed on him on his conviction of a criminal offence (whether during or before the said period) by such a court

and in either case has not received a free pardon in respect of the offence."

No particulars of any arrest or detention or conviction need, therefore, be given if they refer to a period before 3 years of the application unless caught by (a) and (b) above.

In the second place, the Citizenship Rules, 1960, had, in fact, been repealed by the Citizenship Rules, 1962, which were in turn repealed by the Citizenship Rules, 1964. The latter Rules were deemed to have come into force on Malaysia Day i.e. 16th September, 1963, and are, therefore the substantive rules in force on the date of the respondent's application for citizenship.

Clearly, the respondent was wrongly charged under the Citizenship Rules, 1960. That he was in 1965, by reason of the effluxion of time a person of good character under the definition in the 1960 Rules, if continued in force, and that he could not have, therefore, committed any offence under the 1960 Rules are now not of any importance. What is material, however, is that the respondent had been wrongly charged under rules which had been repealed. He should, of course, have been charged under the 1964 Rules, as amended, and in point of fact, he had in his application made in December, 1965, used a form prescribed under the new rules, which required declarations of a somewhat different nature.

The form used by the respondent, produced as Ex. P.1, was Form G and was the correct form to be used by a person in the respondent's position except that all references to Singapore, wherever they occurred therein should have been deleted by reason of the amendments contained in L.N. 426 dated 17th November, 1966. The failure to delete the relevant words is of no significance whatsoever. The relevant portion of the declaration, which first appeared in the Citizenship Rules, 1962, required of the application is as follows:—

"DECLARATION

22. (b) I declare that —

(i) I am of good character;

(ii) I have not been convicted or found guilty by a competent court in any country of a criminal offence.

*NOTE.* If in fact you have been convicted or found guilty by a competent court in any country, give details below:

x x x

(iii) I have never been arrested or detained by any competent authority in any country.

*NOTE.* If you have give details below:

x x x

(e) I do solemnly and sincerely declare that the particulars given by me in the application are true to the best of my knowledge and belief. I fully understand that if in this application I have knowingly made any false statement, I shall be liable on conviction to imprisonment for two years or a fine of one thousand dollars or to both such imprisonment and fine.

Dated at..... this..... day of..... 19.....

.....

Signature or right thumb print of applicant.

Before me

Signature of Registrar of Citizens

Interpreted and explained by

....."

If an applicant had, in fact, been previously arrested or detained and had, in fact, been convicted and he had, in making his application, declared himself to be a citizen of good character, and further declared himself not to have been convicted, arrested or detained, and had put "nil" under the particulars required of previous convictions and arrests or detentions, then he would appear to have made a false declaration in his application. And it matters not when he had previously been convicted, since even if, before 1st October, 1962, the date of the repeal of the 1960 Rules, he could claim by the effluxion of time to be a person of good character under the old 1960 Rules so as to come within the provisions of section 13(c) of the Interpretation and General Clauses Ordinance No. 7 of 1948 and could, therefore, under the new rules claim to be of good character, he had nevertheless under these new rules to state his previous convictions, detentions and arrests.

This is abundantly clear from the plain wording of the new rules, and it becomes clearer from a consideration of the reasons for the change in the rules. Under the old 1960 Rules, an applicant must be of good character before he could apply and he had a yardstick by which to assess his character if he had been previously convicted. Under the 1962 and the 1964 Rules, he has to be of good character and has to declare his previous convictions, if any. But it does not mean that a person previously convicted could not claim to be presently of good character if, from his previous conviction, he has reformed and has lived the life of a good and responsible citizen. To hold otherwise would be to go against the dictates of good sense and the rules of legal interpretation.

Citizenship by naturalisation is a discretionary grant. Under article 19(1) of the Constitution of Malaysia, such a grant may be made to a person over the age of 21 years if the Government is satisfied —

"(a) that

(1) he has resided in the Federation for the required periods and intends, if the certificate is granted, to do so permanently;

(b) that he is of good character; and

(c) that he has an adequate knowledge of the Malay language."

Nowhere is it stated that the applicant must not have been previously convicted or arrested or detained. To my mind, the new rules are so designed as to place before the relevant authorities all the facts relating to the applicant so that the Government may properly exercise its discretion whether to make the grant or not. They relieve the applicant of any mental exercise whether, in view of his previous conviction or convictions, to claim nevertheless to be of good character. It seems to me, therefore, that under (b) of the new form of declaration cited above, the various declarations are not cumulative but separate and distinct.

I now come to the substantive appeal.

The prosecution adduced evidence at the trial to the effect and purpose that the respondent's application form, which he produced, had previously been filled in, but was unsigned, that is, undeclared when he brought it to the office of the Registrar of Citizens. He first saw P.W.3. a man of the same racial origin, who was the clerk in charge of receiving and checking the forms of application from Indians. After he had checked the entries, P.W.3 brought the respondent to the assistant registrar of citizens (P.W.2) before whom, after a conversation between the respondent and P.W.3, the respondent affixed his thumb print. It is in evidence that in the course of this conversation, P.W.3 asked the respondent, among other things, if he had previously been convicted, and on receiving no for the answer, he asked the respondent to sign the application. A list of the respondent's convictions in the prescribed form CR. 6A was produced in evidence, the original having been duly served on the respondent under section 399 of the Criminal Procedure Code (Cap. 6).

On this evidence, the learned trial magistrate acquitted and discharged the respondent without calling on his defence.

In his grounds of decision, the learned trial magistrate said that he was not satisfied that P.W.3 had fully interpreted and explained the contents of the declaration and consequently he held that the respondent did not knowingly make a false statement. With respect, I cannot agree with the learned trial magistrate on the evidence as contained in the record. The evidence of P.W.3, if believed, must necessarily establish that the respondent had *prima facie* made a false statement and had then affirmed the false statement by affixing his thumb print at the appropriate place in the application form. No reasons were given for not believing P.W.3. In fact, the learned trial magistrate did not disbelieve P.W.3. What he held was that the evidence was insufficient. In this the learned trial magistrate did not appear to me to be logical.

His attention was not, however, drawn to the case of *Public Prosecutor* v. *Yong Nam Seng & Anor.*[1] This case deals with a charge of making a false declaration under the Customs Ordinance. The form prescribed for use contains the following form of declaration —

"CERTIFIED that I have the means of knowing and do hereby declare that:

(a) The above particulars are true and complete."

Azmi J. (as he then was) held that for the purpose of section 129(1) of the Customs Ordinance (the penal section) it was sufficient for the prosecution to prove that a declaration had been made and that the particulars in such a declaration were untrue or incorrect. This decision was followed by Ong Hock Sim J. in the case of *Mohamed Abdullah* v. *Public Prosecutor,*[2] and in view of the practical similarity of the form of declaration is, to my mind, applicable to the case under appeal.

It will be seen from the record that the prosecution had proved that the respondent had made a declaration under paragraph 22(b) in Form G, and that the particulars in such a declaration were false. The further requirement under paragraph 22(c) of the said form is, to my mind, only a re-declaration, this time made, as stated therein, "solemnly and sincerely." But paragraph 22(c) does not bring the declaration within the Statutory Declarations Ordinance of 1960, as despite the solemn and sincere declaration, it is not in the statutory form. It is nevertheless a declaration which is, under prescribed penalties, required to be true.

*Mens rea* is a necessary ingredient of the offence. The learned trial magistrate must consider whether the prosecution evidence had not established a *prima facie* case for him to call on the respondent to rebut such evidence or raise a reasonable doubt thereto by evidence that when he denied his previous conviction, he did not know it to be false or that he did not make this false declaration knowingly. He did consider it but would appear to confuse knowledge with procedure.

The above two cases would also dispose of the learned trial magistrate's second ground, *viz.* that the respondent was not under oath and, therefore, not bound if he were to tell a lie. However, the learned trial magistrate conceded that the respondent would, however, be bound if "his mind had been directed to what he was suppcsed to truly declare." Having regard to the evidence of P.W.3, it seems to me that the finding that the respondent was not directed to

what he was supposed to declare could not be maintained on the evidence.

The third reason given by the learned trial magistrate was that proof of the respondent's previous convictions was not properly adduced without the production of three certificates under the provisions of section 399 of the Criminal Procedure Code. I am unable to find in this particular section any requirement for this proposition. All that the prosecution has to do is to prove that a copy thereof had been delivered to the accused within the time stipulated in the proviso. Until this has been done, the report cannot be received in evidence: see *Chong Peng* v. *Public Prosecutor* [3] and *Public Prosecutor* v. *Ng Fah,*[4] and *Mallal's* Criminal Procedure, 4th Edition, page 565-567. But when this has been done, the report becomes receivable in evidence.

The learned trial magistrate further appeared to have been concerned with the difference between the name of the respondent appearing on Form G and the name in the form CR. 6A, where it was spelt "Munusamy s/o Aragovindah." The two spellings are obviously phonetic rendering in Roman characters of the same name, but if there is any doubt in the matter, there is the clear coincidence of the respondent's identity card numbers (both old and new) in both the application Form G and the form CR. 6A. It does not appear to me that the learned trial magistrate has any cause for concern. In any event, it was open to the respondent to refuse service of any CR. 6A form if it did not relate to him or to avail himself of the provisions of section 399 of the Criminal Procedure Code to call the registrar of criminals to establish that he was not the person concerned.

For these reasons, the acquittal and discharge cannot stand. The charge should be amended to come within the 1964 Rules and the defence should be given the right to recall any witnesses for further cross-examination on the amended charge — section 162 of the Criminal Procedure Code. This may not be so satisfactory to the defence as a trial *de novo*. Coupled with this is the fact that the learned trial magistrate has since gone on transfer. I am, therefore, of the opinion that in the interest of justice, the proper order would be a retrial before another magistrate.

The prosecution will have the responsibility of framing a proper charge. When it comes to do so, I trust that the prosecution will pay regard to the fact that under the Penal Code "the making of any number of false statements in the same deposition is one aggregate case of giving false evidence and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition," *per* Jenkins C.J. and Mookerjee J. in *Laha* v. *Emperor.*[5] This decision should, in my view, apply to the instant case. Perhaps, too, the prosecution will consider this passage in the light of what I had said about the claim to be of good character. Further, the charge will have to have incorporated in it the word "knowingly" to bring it within section 16(1) of the 2nd Schedule of the Constitution of Malaysia.

The appeal is allowed. The order of acquittal and discharge is set aside and a retrial ordered before another magistrate on a charge to be framed under the Citizenship Rules, 1964, as amended.

*Appeal allowed.*
*Retrial ordered.*

Solicitors: *Yeoh Kian Teik & Co.*

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## ISMAIL & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Winslow J.) January 19, 1967]

[Singapore — Federal Court Criminal Appeal No. Y10 of 1966]

*Criminal Law and Procedure — Identification parade — Evidence of non-identification of accused persons at identification parade given at preliminary inquiry — No such evidence given at trial — Whether appellate court entitled to take such evidence into consideration.*

The appellants had been convicted of charges of wrongful confinement and robbery. At the preliminary inquiry evidence was given of the holding of an identification parade at which certain witnesses failed to identify either of the accused. This evidence was not given at the trial.

**Held:** if the evidence of the non-identification had been given at the trial the verdict might well have been different, especially in view of the most unsatisfactory features of the trial and having regard to this evidence which the appellate court would in the circumstances take into account, the prosecution had failed to prove the guilt of the appellants beyond reasonable doubt and therefore the convictions and sentences must be set aside.

FEDERAL COURT.

*Dato' David Marshall* for the appellants.

*Tay Soo Tee* (Deputy Public Prosecutor) for the respondent.

**Wee Chong Jin C.J.:** The appellants were convicted in the High Court on the following two charges:—

1. That you (1) Ismail bin Jalil
(2) Ayob bin Sarip

on or about the 29th day of August 1965 at about 11.30 a.m. in front of No. 268 Bukit Timah Road, Singapore, in furtherance of the common intention of you both, did wrongfully confine one Tan Yew Lye in a motor-car No. SL. 9991, and thereby committed an offence punishable under section 342 read with section 34 of the Penal Code (Chapter 119).

2. That you (1) Ismail bin Jalil
(2) Ayob bin Sarip

are charged that you, on or about the 29th day of August, 1965, at about 11.30 a.m. along Cavenagh Road,